

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTONIO GUYTON,

Plaintiff,

v.

CITY OF STOCKTON, et al.,

Defendants.

No. 2:24-cv-0922-DC-AC (PS)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS IN PART

(ECF Nos. 13, 23)

Plaintiff proceeds in this matter pro se. The matter was referred to a United States Magistrate Judge pursuant to Local Rule 302(c)(21).

On February 20, 2025, the magistrate judge filed findings and recommendations recommending that Defendants' motion to dismiss, ECF No. 13, be granted but that Plaintiff be granted leave to amend to file a third amended complaint as to all claims except those arising under the First and Fifth Amendments. ECF No. 23. The findings and recommendations were served on the parties and contained notice that any objections to the findings and recommendations were to be filed within twenty-one days.

Plaintiff has filed objections to the findings and recommendations. ECF No. 24. Specifically, Plaintiff objects to the recommendation that his claims arising under the First and Fifth Amendments be dismissed without leave to amend because he has additional facts he can allege in his third amended complaint to cure the deficiencies identified by the magistrate judge

1 as to those claims. *Id.* Based on the factual allegations Plaintiff proffers in his objections, it is not
2 clear that granting Plaintiff leave to amend his First Amendment claims would be futile.
3 However, as to Plaintiff's Fifth Amendment claims, Plaintiff acknowledges that he incorrectly
4 pled his due process claims under the Fifth Amendment, which does not apply to the defendant
5 state actors, and thus granting leave to amend claims under the Fifth Amendment would be futile.
6 To the extent Plaintiff requests in his objections that he be permitted to assert claims under the
7 Fourteenth Amendment, Plaintiff has already asserted claims under the Fourteenth Amendment
8 and the magistrate judge recommends that he be granted leave to amend those claims.

9 The court reviewed the file and finds the findings and recommendations to be supported
10 by the record and by the magistrate judge's analysis, and the undersigned will adopt the findings
11 and recommendation in part. Specifically, Defendants' motion to dismiss will be granted, but
12 with leave to amend on all claims except claims arising under the Fifth Amendment.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The findings and recommendations filed February 20, 2025 (ECF No. 23), are adopted
15 in part; and
- 16 2. Defendants' motion to dismiss (ECF No. 13) is GRANTED;
- 17 3. Plaintiff's Second Amended Complaint (ECF No. 12) is DISMISSED, with leave to
18 amend as to all claims except for those brought under the Fifth Amendment;
- 19 4. Plaintiff shall file a third amended complaint within thirty (30) days from the date of
20 this order; and
- 21 5. This matter is referred back to the magistrate judge for further proceedings.

22
23 IT IS SO ORDERED.

24 Dated: September 15, 2025



25 Dena Coggins
26 United States District Judge

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